

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 3/27/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Skip and Gail Thomson,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 01-04-028
(Filed April 9, 2001)

OPINION DENYING PETITION TO MODIFY

1. Summary

This decision denies the petition of Skip and Gail Thomson to modify Decision (D.) 01-12-031. Petitioners have failed to show a valid reason for modification of the decision.

2. Background

The facts in this case are not in dispute.

In May 2000, the Thomsons complained to Pacific Bell Telephone Company (Pacific) that a neighbor had received a Vacaville exchange telephone number, while others in the neighborhood had been assigned Dixon exchange numbers. Pacific investigated and found that 19 customers in the Dixon exchange had incorrectly been given Vacaville exchange numbers (including the Thomsons), and that three customers in the Vacaville exchange had incorrectly

been assigned Dixon exchange numbers. Pacific blamed the error on inaccuracies in the database used to associate addresses with the correct exchange.

Pacific notified the 22 customers that their numbers would be changed to the correct Vacaville or Dixon exchange. Pacific stated that it would make the changes without charge and it would provide number referrals for six months at no cost to the subscribers. Pacific stated that the changes were required in order for the company to comply with its tariffs and to provide only local telephone service. Pacific is permitted to provide telephone service within a Local Access and Transport Area (intraLATA service), but it is not permitted to carry traffic across LATA boundaries (interLATA service). InterLATA service is reserved to interexchange carriers.

The Thomsons filed their complaint on April 9, 2001, asking that the LATA boundaries be changed so that they could keep their Vacaville local service. A status conference was conducted by the assigned Administrative Law Judge (ALJ) in Fairfield on May 18, 2001. Pacific argued at that time that it had no authority to change the LATA boundary between Vacaville and Dixon, nor did it have authority to continue to permit those located in one exchange to receive local service through a neighboring exchange. However, Pacific agreed to make no change in complainants' telephone number until the resolution of the complaint.

By ALJ Ruling dated June 25, 2001, both Pacific and the Thomsons were asked to respond to further questions in writing. Each party did so. An evidentiary hearing was scheduled in Vacaville on October 25, 2001, a date selected by the complainants. Pacific objected that the hearing should be sooner, but the ALJ elected to proceed with complainants' requested date.

On the date of hearing, Pacific appeared with its witnesses. Complainants, however, failed to appear. The ALJ took testimony from one Pacific witness, received one exhibit into evidence (Pacific's response to the questions posed in the June 25 ruling), and declared that the case was deemed submitted for determination.

On December 19, 2001, the Presiding Officer's Decision was issued, finding that the complaint stated no act or thing done by Pacific that was in violation of any provision of law, order or rule of the Commission. Decision 01-04-028 became a final decision of the Commission on December 19, 2001.

3. Petition for Modification

The Thomsons do not allege that the Commission's decision is in error. They argue only that they were not notified of the Vacaville hearing on October 25, 2001. They state that they learned about the hearing only upon receiving the Presiding Officer's Decision dated November 14, 2001. The Thomsons state:

"It is unfair to make a decision when the complainants were never notified. Does anyone think after nearly 18 months of hard work and effort we would fail to appear at the hearing?

"Again we are asking for a rehearing so we may present our case which if given the chance, makes a great deal of sense."
(Petition, at 2.)

Pacific opposes the petition for modification on three grounds:

First, the utility argues that the petition fails to state "changes in the text" sought in D.01-12-031, a requirement for such petitions under Rule 47 of the Rules of Practice and Procedure. Pacific states that the petition does not ask for any modification of the decision.

Second, Pacific states that the allegation that petitioners did not receive notification of the hearing is untimely and should be given no weight. The utility

states that the Notice of Evidentiary Hearing dated August 20, 2001 was addressed to “All Parties” in this proceeding. Notice of the hearing also was published in the Commission’s Daily Calendar, which was publicly available on the Commission’s website from August 21, 2001, until the date of hearing.

Moreover, Pacific states, petitioners admit that they received the Presiding Officer’s Decision dated November 14, 2001. The cover letter accompanying the decision advised parties that they could file an appeal within 30 days and explained the procedure for doing so. Complainants did not file an appeal.

Finally, Pacific states:

“[N]othing in the Petition even remotely suggests that Decision 01-12-031 was wrongly decided or that there is any alleged basis for reaching a different result. Indeed, as Decision 01-12-031 points out, this case was determined as a matter of law. As a result, Complainants fail to offer any reasonable basis for granting their Petition.”

(Pacific Response, at 3.)

4. Discussion

We take official notice that the formal file in this case shows that the Notice of Evidentiary Hearing dated August 20, 2001, is accompanied by a “Proof of Service by Mail” declaring, under penalty of perjury, that the notice was placed in the mail addressed both to Pacific and to complainants. The address for complainants is the same address that was used in mailing the ALJ Ruling of June 25, 2001, and the Presiding Officer’s Decision, dated November 14, 2001. We know that complainants received the latter two documents, because they responded to the first and acknowledged receipt of the second in their petition.

We cannot explain why petitioners apparently failed to learn of the date of hearing in Vacaville, particularly since the date selected was the date that they had recommended. Having begun the complaint proceeding, however, it was

incumbent upon them to keep themselves apprised of its progress. As Pacific points out, the date of hearing was posted on the Commission's website from August 21, 2001 through October 25, 2001, the date of hearing. Petitioners also could have checked the status of the case (and learned the date of hearing) with a phone call to the Calendar Clerk, the Public Advisors, the ALJ or the Consumer Affairs Branch of the Commission.

Moreover, when the Thomsons received the Presiding Officer's Decision dated November 14, 2001, they also received a cover letter from the Chief Administrative Law Judge explaining when, where and how to file an appeal of the decision. Why the Thomsons did not file an appeal is left unanswered in the petition for modification.

Finally, D.01-12-031 found that there were no disputed issues of fact alleged in this case. The complaint sought only to have Pacific change the LATA boundaries so that the Thomsons could continue to have local telephone service within Vacaville. As D.01-12-031 found, as a matter of law, a change in LATA boundaries is a matter within the jurisdiction of the Federal Communications Commission, and Pacific cannot unilaterally make the change that was sought.

Petitioners have failed to show a valid reason for modification of D.01-12-031, and the petition must be denied.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 (g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on _____.

Findings of Fact

1. Petitioners seek modification of D.01-12-031 on the basis that they were not notified of the date of hearing in Vacaville.

2. The Commission's formal file shows a certificate of service stating, under penalty of perjury, that the notice of hearing was placed in the mail to petitioners on August 20, 2001.

3. The date of hearing was shown on the Commission's website from August 21, 2001, until the date of hearing on October 25, 2001.

4. The date of hearing was a date selected by petitioners.

5. Petitioners apparently did not telephone the Commission offices to learn the status of their case and the date of hearing.

6. Petitioners received the Presiding Officer's Decision dated November 14, 2001, along with instructions on how to appeal the decision.

7. Petitioners did not appeal the Presiding Officer's Decision.

8. Petitioners propose no change in the Commission's final decision.

Conclusions of Law

1. Petitioners have failed to show a valid reason for modification of D.01-12-031.

2. The petition for modification should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of Skip and Gail Thomson to Modify Decision 01-12-031 is denied.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.